

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision of October 1st, 2013 wherein the ministry determined the appellant is ineligible for disability assistance as set out in section 10(4) Employment and Assistance for Persons with Disabilities Act (EAPWDA) because the appellant failed to comply with a direction from the ministry to submit all the required financial documentation in reference to his Self-Employment Program (SEP); and further, that the ministry determined the appellant is not eligible for disability assistance until the appellant complies with the ministry's direction as set out in section 28 EAPWDR.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Act (EAPDWA), section 10
Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 28

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Self-Employment Program (SEP) – Client Monthly Report – on business “A” for months of April to July 2013;
- SEP – Client Monthly Report – on business “B” for months of April to July 2013;
- Monthly Report, Form SD0081, for April, May and June 2013 completed by appellant;
- Undated letter from ministry to appellant explaining Annualized Earnings Exemption and the impact on disability assistance;
- Letter dated April 23rd, 2013 from appellant to ministry outlining his personal circumstances and the relationship this will have on disability assistance and SEP ; his request for information on the effect of and assistance.
- Letter dated August 1st, 2013 from appellant to ministry explaining why his reports and documentation was late in being sent to ministry;
- Letter dated August 23rd, 2013 from the ministry to the appellant;
- Request for Reconsideration dated September 20th, 2013.

The appellant is a recipient of disability assistance with a dependent partner. He has two companies and participates in SEP. On April 23rd, 2013 the appellant sent a letter to the ministry advising he understood that if he did not submit the SEP paperwork on time that the ministry may withhold the direct deposit of his disability assistance. In the letter the appellant requested that the ministry take into consideration that he was not close to reaching his annual income earning exemption. For example, the monthly report and documents which the appellant would submit in April determines the amount of disability assistance that he would be eligible to receive in June.

The ministry's file indicated the following:

- On April 26th, 2013, the appellant submitted his SEP report and financial documents from March 2013 for May disability assistance.
- On May 17th, 2013 the ministry noted the appellant had failed to submit his SEP documents for April and therefore the ministry was unable to determine his eligibility for June disability assistance.
- On May 30th, 2013 the appellant left a message for the ministry stating that he realized he had not submitted his SEP documents or monthly stub for continued assistance; however requested his June disability assistance cheque be issued and ready for pick up. The ministry attempted to call the appellant and left a message advising him that his eligibility could not be determined without the monthly stub and the SEP documents for April.
- On June 6th, 2013 the appellant requested that the June disability cheque be issued but the cheque was cancelled as it was not claimed.
- On June 21st, 2013 the ministry noted the appellant failed to submit his SEP documents for May and the ministry was unable to determine his eligibility for July assistance.
- On July 8th, 2013 the ministry received a letter from the appellant dated July 2nd, 2013. In the letter the appellant stated it had been a hectic 3 months and he was just starting to catch up on his paperwork. He requested the ministry accept the three monthly stubs (April, May and June) that he submitted which shows that he did not go over the allowed \$9600.00 annual earnings exemption. The ministry noted the appellant had failed to submit the required SEP documents and therefore were unable to determine his eligibility for disability assistance. The ministry noted the appellant continually fails to submit the required SEP documents within the required time frame despite constant reminders.

- On July 11th, 2013 the ministry noted that the appellant had been left several messages and that he had not returned the ministry's calls.
- On July 12th, 2013 the ministry noted that the appellant had an appointment scheduled for July 23rd, 2013 at 10:30 am to discuss SEP but the appellant failed to show for this appointment.
- On July 31st, 2013 the ministry noted the appellant's August disability cheque had been cancelled as he had failed to submit his SEP documentation for June or a monthly stub for continued assistance for August, and therefore the appellant's eligibility for disability assistance could not be determined.
- On August 1st, 2013 the appellant submitted a letter stating he was still not caught up on his paperwork; that he hadn't paid himself any salary and is barely making his rent payment. The appellant stated that he looked forward to receiving the cheques that had been withheld as they were needed. He advised that the income that he has to declare for July is his GST credit; that he is on an annual earning exemption schedule and so far he has not had income to add to that amount. The appellant stated that he had he has been trying to balance the many challenges he is experiencing. The ministry noted that the appellant has repeatedly cancelled his appointments with the ministry to discuss his SEP and to submit his SEP documents.
- On August 8th, 2013 the appellant advised the ministry that he wanted his file noted that he would like some help with his paperwork.
- On August 20th, 2013 the appellant submitted SEP Client Monthly Reports for April, May, June and July. The ministry noted the appellant did not submit the financial documents to support the reports submitted by the appellant.
- On August 23rd, 2013 the ministry denied the appellant disability assistance for failing to submit his financial documentation that is required with the SEP Client Monthly reports and the stub for continued assistance. The ministry noted the appellant failed to comply with the reporting requirements for several months despite repeated reminders to do so.

The ministry determined that despite the appellant's participation in the annualized earnings exemption, the appellant is required to submit his SEP Client Monthly Report and the stub for continued assistance along with the financial documentation (i.e. receipts, etc.) by the 5th of each month as per the reporting requirements for the SEP. The ministry determined that since the appellant failed to submit the requested financial documentation pertinent to the Client Monthly Report for April, May, June and July that he was not eligible for disability assistance. The ministry further determined that the appellant would not be eligible for disability assistance until he had complied with the ministry's request to provide the financial documentation to support the SEP reports.

In the Request for Reconsideration the appellant stated that he is on an annualized earnings exemption program; that the ministry worker has refused to learn how this is interpreted; that he has repeatedly requested assistance to help him with his paperwork as he fell behind due to his move but the ministry has refused to offer a service provider; that the legislation does not exist for his personal circumstances; that the ministry chooses to take the easy way out when interpreting the legislation; that due to the ministry staff he has been bankrupting his business in the last few months in order to pay for living expenses; and that he is requesting all the ministry's decisions which resulted in a loss of benefits of the last couple of years to be reconsidered. The appellant stated that he deserves quality service and access to annualized earning exemption and self-employment program; that his interpretation of the policy is different than the ministry staff. The appellant further stated that he attempted to provide his case worker with the documentation that was required in support of his SEP, but that the worker refused to look at the paperwork, and failed to work with the appellant.

At the commencement of the hearing the appellant requested to tape record the proceedings. The appellant was advised that the tape recording of the hearing is not permitted. The appellant requested the panel to provide the authority for making this ruling. The appellant was asked to leave the hearing room while the panel discussed and researched his request. The ministry, who attended the hearing via teleconference, was asked to disconnect from the teleconference line and the panel disconnected from the line as well. The hearing was re-convened and the appellant was requested to return to the hearing room and the teleconference line was re-activated so the ministry could re-connect. The appellant was advised that under section 5.1(e) of the Practices and Procedures established by Chair, Employment and Assistance Appeal Tribunal the tape recording of hearings is not permitted. The appellant objected to the panel's decision and requested to see the policy, which he was shown. The appellant then objected to being asked to leave the hearing room because he felt it was an embarrassment to him to have to come and go from the hearing room because he frequents this location as do many of his clients. The appellant then questioned the need for everyone to leave and he was advised the panel needed privacy to discuss the matter. The appellant raised his objection again to not being permitted to tape record the hearing because he felt that tape recording the hearing was the only way his rights to a fair hearing would be protected.

The ministry called an EAW as a witness. The appellant stated that since the EAW was present he wished to question the EAW as he felt the EAW had information that would support his appeal. The EAW was requested to leave the room being utilized by the ministry representative until he was called.

In his opening statement to the panel, the appellant repeated his concern that his rights were not being adequately protected due to the fact that he was not allowed to tape the proceedings of the hearing. He further indicated this lack of confidence that the panel was 'independent of the Ministry' and expressed skepticism that his case would receive a fair hearing. The appellant also raised his concern about the Appeal Record being sent to his old address. The appellant stated the ministry was given his new address several months ago but like everything else it is simply ignored. The appellant complained that he had to attend a former ministry office to be provided with a copy of the Appeal Record. The panel confirmed that the Appeal Record that the appellant had in his possession and the one provided to the panel were the same. The appellant also complained that he did not receive the two day reminder notice on when the hearing was scheduled.

At the hearing the appellant called one witness who testified that she was present with the appellant on August 16th, 2013 at the ministry office when the appellant had two storage totes full of documents which he wanted to give to the ministry but the ministry would not accept them.

The panel finds the testimony of this witness is relevant to the issue under appeal and that her testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) EAA.

The appellant testified that on August 16th, 2013 he and his spouse attended the ministry office with two large tote storage boxes full of documents and wanted to give them to the Employment and Assistance worker (EAW) but he would not accept them although in the Ministry's letter of August 23rd, 2013, the ministry stated he did not provide receipts. The appellant wished it to be noted that the meeting of August 16th was not noted in the appeal record, and questioned that omission. The appellant testified that he could not provide the receipt(s) that he issued to his client(s) for privacy reasons because the receipt he would identify the client. The appellant testified that he was not able to copy the documents the EAW wanted because of the cost involved and he did not know what document(s) the ministry wanted. The appellant stated that the ministry workers are public servants; that they need to act like public servants and communicate what they want. The appellant stated it was the EAW's job to go through the appellant's documents to find what was needed. The appellant testified that the EAW knows he doesn't make enough money but just a few days after he attended the ministry office (August 16th, 2013) and spoke with the EAW he received a letter stating that he needs "to provide information to allow us (the ministry) to determine your eligibility. Since you did not provide the information, you are no longer eligible for assistance". The appellant testified that all the documents were in

the boxes but the EAW would not accept them; that all the EAW needed to do was go through the documents and he would see they were all there. The appellant complained he had requested that the ministry provide him with assistance and the ministry was not providing that help to assist him in sorting and organizing his documents.

In response to questions from the panel, the appellant stated –

- the large storage boxes, called totes, contained all sorts of receipts, bank statements, student files, etc.
- the papers were loose and not correlated by month or grouped to match the monthly SEP reports.

The appellant testified that he did not have time to correlate the papers that the papers were disorganized and he was busy with his business and moving to a new residence with his spouse.

In response to a question from the ministry the appellant acknowledged he attended the ministry office on August 16th, 2013 in response to an appointment to add his partner to his file and that he did not know the ministry could not deal with another matter at the same time. The appellant acknowledged he had missed previously scheduled appointments with the ministry to discuss the SEP program and the reporting requirements.

The panel finds the appellant's testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) EAA.

The ministry's witness testified that he was unable to determine the appellant's eligibility for disability assistance because the appellant did not submit the required receipts to support the monthly SEP report; that the documents had had to be submitted on a monthly basis to determine eligibility. The witness testified that he had a signal placed on the appellant's file for monthly disability cheque to indicate the appellant needed to provide information so that he would be compliant with legislation. The witness testified that he left phone messages for the appellant requesting that he attend the ministry office to clear things up but the appellant did not attend so the monthly disability cheque was cancelled.

In response to questions from the appellant the witness stated that:

- the appointment on August 16th, 2013 was to add the appellant's spouse to the appellant's file and was not about the ministry receiving and reviewing any documents from the appellant regarding SEP;
- that adding a spouse to a file is a complicated matter and takes time;
- it is not appropriate to deal with other issues when an appointment is scheduled for a specific matter;
- addressing the issue of the missing documents was also an activity that would have taken considerable time;
- the appellant had cancelled several appointments regarding SEP and he didn't show up for others;
- the appellant's file is not closed.

The panel finds the appellant's testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) EAA.

The ministry relied on the facts in the reconsideration decision.

The appellant then requested that the ministry provide him with the specific information that was required in support of the SEP, indicated that he did not feel that regular reporting of income and expenses should be required under the Annualized Earnings Exemption; indicated his wish to meet with a different EAW; indicated concern with the level of training provided to ministry staff; and repeated his concern that the EAW did not process the documents that had already been provided to him.

In response to a question from the panel, the ministry stated that when a person applies for SEP the applicant is provided with a package of information on what is needed and that every month a card goes out and the applicant is expected to submit the card and the SEP report with the receipts.

The panel finds the ministry's testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) EAA.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration to declare the appellant ineligible for disability assistance under section 10(4) EAPWDA because the appellant failed to comply with a direction from the ministry to submit all the financial documentation in reference to his SEP program; and further, that the ministry determined the appellant is not eligible for disability assistance until the appellant complies with the ministry's direction as set out in section 28 EAPWDR.

The legislation considered:

EAPWDA

Information and verification

Section 10

(1) For the purposes of

- (a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,
- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
- (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
- (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.

(3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).

(4) If an applicant or a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.

EAPWDR

Consequences of failing to provide information or verification when directed

Section 28 (1) For the purposes of section 10 (4) [*information and verification*] of the Act, the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant or recipient complies with the direction.

The ministry argued that section 10 EAPWDA states that the appellant is required to provide all the necessary information to determine if the person is eligible for assistance and based on the information presented the appellant is not eligible for assistance. The ministry argued that the appellant either missed or cancelled appointments that were arranged to assist him; that the appellant did not submit the monthly stub and SEP reports with the financial receipts for the months of April, May, June and July as requested by the ministry and therefore is not eligible for disability assistance. The ministry proposed that there are a number of community agencies that the appellant could solicit for assistance with his documents.

The appellant argued that he tried to submit the financial receipts on August 16th, 2013 but the ministry would not accept them. The appellant also argued that he had been busy with his business and moving; that he did not have time to sort the receipts so just took all his receipts that were in a storage box or tote to give to the ministry. The appellant argued he had requested help from the EAW to assist him in sorting his receipts but his request was ignored.

The appellant did submit the monthly SEP reports for April 2013 to July 2013 inclusive to the ministry but he did not submit the financial receipts to support these reports. The appellant submits that he took two boxes of receipts to the ministry office on August 16th, 2013 but the ministry would not accept them. The ministry argues the appellant had an appointment for another matter and it would not be appropriate for the EAW to accept documents at that time. The appellant testified the documents in the storage box or tote were loose and not correlated to the monthly SEP report and there is no evidence before the panel that the documents contained in the storage boxes were the financial receipts needed to support the monthly SEP report which is what the ministry needed to determine his eligibility for disability assistance.

Section 10(4) EAPWDA states that if an applicant or a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.

The panel finds that the appellant failed to submit the SEP documents for the months of April, May, June and July of 2013 within the required time frame and when the SEP reports were submitted in August 2013 the appellant had failed to submit the financial records/receipts with the report so the ministry could determine the appellant's eligibility for disability assistance. The ministry's position is that several attempts were made to discuss the SEP reporting requirements with the appellant but the appellant would either not return the ministry's calls or would not attend the appointments(s). The ministry's position is that without the financial records/receipts to support the SEP monthly report the ministry was not able to determine the appellant's eligibility for disability assistance. The evidence before the panel is that the appellant acknowledged in letters to the ministry that he had not complied with the ministry's requests to provide the financial records; that he was disorganized, busy with his businesses and relocating his residence. The appellant's position is that when he attended the ministry office on August 16th, 2013 for an appointment on another matter, he tried to surrender two large tote boxes containing the receipts for the SEP reports (May to July inclusive) to the ministry but the ministry refused to take the boxes. The evidence is that the tote boxes contained more than just receipts (client's files); and, that the receipts were loose in the box and not correlated or attached to any specific SEP report.

The panel finds that the appellant did not comply with the ministry's request to provide the monthly SEP report with the receipts attached as requested. The panel finds that it is not reasonable for the appellant to expect the ministry to sort through and correlate two boxes of loose receipts to the appellant's SEP reports for the months of April to July 2013.

The panel finds the ministry's decision to determine that the appellant is not eligible for disability assistance because the appellant failed to comply with the ministry's direction to provide the financial records for his SEP reports is supported by the evidence and was reasonable.

The panel finds the ministry's decision to declare that the appellant is ineligible for disability assistance, hardship assistance or a supplement for the prescribed period as set out in section 10(4) EAPWDA was reasonable.

In reference to the consequences for failing to provide information or verification when directed, section 28(1) EAPWDR states that for the purposes of section 10(4) of the EAPWDA, the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant or recipient complies with the direction.

The panel finds that the ministry reasonably applied section 28 EAPWDR in declaring that the family unit is ineligible for disability assistance until the ministry's direction is complied with.

Therefore, the panel finds that based on the evidence the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision and confirms the decision pursuant to section 24(1)(b) and section 24(2)(a) of the Employment and Assistance Act.